

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>MATTHEW GILMER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>No. 3:10-cv-0969</b>
	)	<b>JUDGE CAMPBELL</b>
<b>T.R. FRANKLIN, INC., et. al.,</b>	)	<b>Magistrate Judge Brown</b>
	)	
<b>Defendants.</b>	)	

**T.R. FRANKLIN, INC.'S MOTION IN LIMINE NO. 1  
TO EXCLUDE EVIDENCE OF PRIOR CRIMINAL ACTS**

Comes now Defendant, T.R. Franklin, Inc., ("Tin Roof"), by and through counsel, pursuant to Rule 37(c)(1) of the Federal Rules of Civil Procedure, and hereby moves the Court to exclude all evidence of prior criminal acts at Tin Roof locations prior to the incident in question. Tin Roof has filed a Memorandum of Law in support stating specifically the grounds upon which the Court should exclude this evidence. As general grounds, Tin Roof would show the Court the following:

1. Pursuant to Fed. R. Civ. Pro. 37(c)(1), the Court should exclude evidence of criminal acts occurring prior to the incident in question because Plaintiff failed to identify any such criminal acts during discovery. Fed. R. Civ. Pro. 37(c)(1); McClung v. Delta Square Ltd. P'ship., 937 S.W.2d 891 (Tenn. 1996); Staples v. CBL & Associates, Inc., 15 S.W.3d 83 (Tenn. 2000); Z-Gem Co. v. Dollar General-A-Car, 406 F.Supp.2d 867 (W.D. Tenn. 2005). By way of written discovery, Tin Roof requested that Plaintiff identify any and all evidence of prior criminal acts that may have occurred inside or outside Tin Roof prior to the incident in question. To date, Plaintiff has produced no such information and his expert was unable to identify any prior instances of criminal

acts that had occurred at Tin Roof. As a result, the Court should exclude any evidence of prior acts of criminal activity at Tin Roof prior to the incident in question in accordance with Rule 37(c)(1) of the Federal Rules of Civil Procedure.

2. The Court should exclude evidence of instances of criminal acts the Tin Roof Nashville located because any such instances are not substantially similar to the incident in question. See Fed. R. Evid. 801; Rye v. Black & Decker Mfg. Co., 889 F.2d 100, 102 (6th Cir. 1989); Koloda v. General Motors Parts Division, General Motors Corp., 716 F.2d 373, 376 (6th Cir. 1983); Galloway v. Big G Express, 208 WL 2704443 (E.D. Tenn. 2008). The call reports produced by Plaintiff in discovery are hearsay without exception. Miller v. Field, 35 F.3d 1088, 1091 (6th Cir. 1994). Additionally, Plaintiff has not shown through discovery or otherwise that there is any substantial similarity between the Nashville and Franklin Tin Roof locations. As a result, the Court should exclude evidence of criminal activity at the Tin Roof Nashville location because such evidence would be irrelevant and unfairly prejudicial. Fed. R. Evid. 401 and 403; Rye, 889 F.2d at 102-103.

WHEREFORE, premise considered, Defendant respectfully requests that the Court exclude all prior instances of crimes committed by third parties against patrons of Tin Roof be excluded as evidence at trial.

Respectfully submitted,

s/Steven J. Meisner

**STEVEN J. MEISNER**

Registration No. 23777

Attorney for T.R. Franklin, Inc.

**BREWER KRAUSE BROOKS**

**CHASTAIN & BURROW, PLLC**

611 Commerce Street, Suite 2600

P.O. Box 23890

Nashville, TN 37202-3890

(615) 256-8787

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing document has been served by the methods indicated upon the following on this 30th day of August, 2013:

<input type="checkbox"/> Hand <input type="checkbox"/> Regular Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> Email <input checked="" type="checkbox"/> EFS	Philip N. Elbert, Esquire (BPR #9430) Lisa P. Binder, Esquire (BPR #24052) J. Isaac Sanders, Esquire Neal & Harwell, PLC 150 Fourth Avenue, North, Suite 2000 Nashville, TN 37219 Email: pelbert@nealharwell.com Email: lbinder@nealharwell.com Email: isanders@nealharwell.com Facsimile: (615) 726-0573 Phone: (615) 244-1713 Attorneys for Plaintiff
<input type="checkbox"/> Hand <input type="checkbox"/> Regular Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> Email <input checked="" type="checkbox"/> EFS	Warren M. Smith, Esquire (BPR #10622) Smith & Tomkins 214 Second Avenue, North, Suite 100 Nashville, TN 37201 Email: wsmith@smithtomkins.com Facsimile: (615) 256-1283 Phone: (615) 256-1280 Attorney for SMW Carothers, LLC, NDG Carothers, LLC and NDG Properties, Inc.

<input type="checkbox"/> Hand	Raymond G. Prince, Esquire (BPR #5592)
<input type="checkbox"/> Regular Mail	Prince & Hellinger, P.C.
<input type="checkbox"/> Certified Mail	150 Second Avenue, N., Ste. 300
<input type="checkbox"/> Fax	Nashville, TN 37201-1902
<input type="checkbox"/> Fed X	Email: rprince@princehellinger.com
<input type="checkbox"/> Email	Facsimile: (615) 244-8644
<input checked="" type="checkbox"/> EFS	Phone: (615) 244-8630
	Attorney for Burke Hanson

s/Steven J. Meisner

**STEVEN J. MEISNER**

SJM:dml